

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE RC2 CORP. TOY LEAD PAINT
PRODUCTS LIABILITY LITIGATION**

Case No. 07-cv-7184

MDL No. 1893

JUDGE LEINENWEBER

**DECLARATION OF ELIZABETH A. FEGAN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY
INJUNCTION PURSUANT TO THE ALL WRITS ACT**

I, Elizabeth A. Fegan, on oath, depose and state as follows:

1. I am a partner at Hagens Berman Sobol Shapiro, LLP, one of three law firms that were appointed Interim Co-Lead Counsel in *In re RC2 Corp. Toy Lead Paint Products Liability Litigation*, MDL 1893. I have full knowledge of the matters stated herein and could and would testify as follows.

2. Neither RC2 nor the Plaintiff in *Barrett, et al. v. RC2 Corp.*, Case No. CH 20924 (Cir. Ct. Cook County, Ill.) provided Interim Co-Lead Counsel with notice of their Motion For Preliminary Approval presented for hearing on January 22, 2008 in state court.

3. I, together with my Co-Lead Counsel, learned that a purported settlement of a nationwide class of consumers that purchased Thomas & Friends Wooden Railway Toys had been preliminarily approved from the media the evening of January 22, 2008.

4. Under the *Barrett* Settlement Agreement, some Class members who no longer possess toys that were recalled may receive a maximum of two coupons or credits in the amount of \$15.00 for the purchase of toys from RC2's on-line store. However, once a toy is purchased on the website, shipping costs between \$5.95 and \$17.95, and thus between 40 and 100 percent of the "value" of the coupons will be dissipated by shipping costs, which are not covered by

Defendants. See <http://shop.learningcurve.com/wps/portal/customer care/shipping> (last accessed on January 27, 2008)

5. Moreover, the average price of the Thomas Toys on the website is \$35.67. The median price of the Toys on the website is \$19.99 (this means that 50% of Thomas Toys are cheaper than this price, while 50% are more expensive), and the mode price is \$19.99 (this means that a toy at \$19.99 is the most frequently occurring price).

6. In the MDL Litigation, the parties have engaged in extensive discovery discussions, the exchange of documents, the negotiation of a protective order, service of notice of depositions, and requests to admit. The parties engaged in numerous in-person and telephonic “meet and confers,” focusing on the large amount of electronic discovery that would need to take place as well as the scope of depositions pursuant to Fed. R. Civ. P 30(b)(6).

7. On October 12, 2007, Defendants formalized prior settlement discussions with the MDL Plaintiffs and solicited a written settlement proposal from Interim Co-Lead Counsel in the MDL.

8. As a result, Interim Co-Lead Counsel sent a letter to Defendants on October 17, 2007, setting forth an outline of the forms of relief that would have to be provided to the Class in exchange for a broad release. Interim Lead Counsel further suggested that the parties choose a mediator and set a date for mediation.

9. In response, Defendants requested a more formalized proposal that included a specific monetary demand. The parties thus agreed that Defendants would provide Plaintiffs expedited responses to certain data requests so that Plaintiffs could make an informed demand. That data was provided on November 21, 2007.

10. After conducting analysis of that data, Interim Co-Lead Counsel made a formal monetary demand on December 10, 2007. The MDL settlement demand, unlike the relief in the proposed state court settlement, included a full refund by Defendants as well as payment for blood lead testing for the children exposed to the toxic paint. Defendants never responded to that letter. Accordingly, the MDL Plaintiffs continued to aggressively litigate this matter.

11. Just two days after Interim Lead Counsel made their second formal demand on Defendants, Plaintiffs' counsel in *Barrett*, apparently with the consent of Defendants, reserved the domain name www.thomastrainsettlement.com, which is now being used to tout the inadequate settlement in *Barrett*.

12. Attached are true and correct copies of the following exhibits:

EX	DATE	DESCRIPTION
1	08/07/07	Class Action Complaint in <i>Barrett v. RC2 Corp.</i> (Cir. Ct. Cook County)
2	01/22/08	Plaintiff's Memorandum in Support of Preliminary Approval of Class Action Settlement filed in <i>Barrett v. RC2 Corp.</i> (Cir. Ct. Cook County)
3	filed on 01/22/08	Class Action Settlement Agreement in <i>Barrett v. RC2 Corp.</i> (Cir. Ct. Cook County)
4	01/23/08	Agreed Motion for Entry of Supplemental Preliminary Approval Order in <i>Barrett v. RC2 Corp.</i> (Cir. Ct. Cook County)
5	01/23/08	Preliminary Approval Order in <i>Barrett v. RC2 Corp.</i> (Cir. Ct. Cook County)
6	12/19/07	Transfer Order in <i>In re: RC2 Corp. Thomas Toys Lead Products Liability Litigation</i> , MDL 1893 (J.P.M.L.)
7	11/11/07	Notice of Removal of Civil Action Under 28 U.S.C. § 1453(b) filed in <i>Wilson v. RC2 Corp.</i> (E.D. Ark.)
8	04/04/03	Recall Alert, U.S. Consumer Product Safety Commission, April 4, 2003, SKU #97222, SKU #97325
9	10/26/07	RC2's Initial Disclosures Under FRCP 26(A)(1)
10	undated	Defendants' "Replacement Request" Form – Wooden Vehicle & Train Set Components Recall (U.S.)
11	02/16/05	Excerpts of the Congressional Record regarding the Class Action Fairness Act, U.S. House of Representatives
12	09/04/07	Defendants' Motion For Transfer to the Northern District of Illinois (J.P.M.L.), and memorandum in support
13	8/29/07	Order Appointing Interim Lead Counsel for the Putative Class

14	undated	Print-out of toys in the category “Wooden Train Play” available for purchase at Defendant’s on-line store, located at http://shop.learningcurve.com/category/Wooden+Train+Play/p-1?navState=0 (last accessed January 28, 2008)
15	reflecting reservation made 12/12/07	Whois Search Results for “thomastrainsettlement.com,” <i>available at</i> http://www.networksolutions.com/whois/results.jsp?domain=thomastrainsettlement.com (last visited Jan. 25, 2008)
16	09/06/07	Letter from Curtis W. Stoelting to U.S. Representatives Bobby L. Rush & Cliff Stearns <i>available at</i> http://energycommerce.house.gov/CPSC%20lead/Responses/RC2.090607.response.082207.pdf (last visited Jan. 25, 2008).
17	06/13/07	Press Release, RC2 Corp., RC2 Corp. Recalls Various Thomas & Friends™ Wooden Railway Toys Due to Lead Poisoning Hazard (June 13, 2007), <i>available at</i> http://www.rc2.com/press/2007/Release_TWR_recall_0907.pdf (last visited Jan. 25, 2008).
18	07/26/07	Press Release, RC2 Corp., RC2 Updates Estimates of Recall-Related Costs (July, 26, 2007), <i>available at</i> http://www.rc2.com/investor/financial/2007/Release_recall_update_final.pdf (last visited Jan. 25, 2008).
19	09/26/07	Press Release, RC2 Corp., RC2 Recalls Five Additional Thomas & Friends™ Wooden Railway Items (Sept. 26, 2007), <i>available at</i> http://www.rc2.com/press/2007/Release_TWR_recall_0907.pdf (last visited Jan. 25, 2008).
20	01/22/08	Press Release, RC2 Corp., RC2 Reaches Proposed Settlement of Nationwide Class Action Arising From Recall of Certain Thomas & Friends™ Wooden Railway Products (Jan. 22, 2008), <i>available at</i> http://www.rc2.com/press/2008/release_recall_settlement_0108.pdf (last visited Jan. 25, 2008).
21	01/25/08	Docket Report for <i>Barrett v. RC2 Corp.</i> (Cir. Ct. Cook County), <i>available at</i> https://w3.courtlink.lexisnexis.com/cookcounty/Finddocket.asp?DocketKey=CAAH0CH0CAJCE0CH (last visited Jan. 25, 2008).
22	Undated	Firm Resumes of Hagens Berman Sobol Shapiro LLP, Kaplan Fox & Kilsheimer LLP, and Price Waicukauski & Riley, LLC
23	05/09/05	Order Granting Plaintiffs’ Motion for Injunctive Relief Under the All Writs Act in <i>In re American Online Spin-Off Accounts Litig.</i> , MDL 1581, Master Case No. CV 03-6971, 2005 U.S. Dist. LEXIS 45625 (C.D. Cal. May 9, 2005)

24	07/12/02	Opinion and Order in <i>Zografos v. Qwest Communications Corp.</i> , No. 00-6201 (D. Or. July 12, 2002)
25	11/07/07	Federal Plaintiffs' Second Amended Complaint
26	01/22/07	Handwritten preliminary approval order dated August 22, 2007 in <i>Barrett</i>
27	12/14/07	Corrected Plaintiffs' Response In Opposition to Motion to Dismiss in Federal Court
28	09/26/07	Recall Alert, U.S. Consumer Product Safety Commission, September 26, 2007 (includes recall of "Toad" vehicle with brake lever, tracking code 16560W00)
29	01/22/08	RC2 Form 8-K dated January 22, 2008 filed with the Securities and Exchange Commission
30	Filed 01/22/08	Proposed Notice of Class Action and Proposed Settlement in <i>Barrett</i>
31	01/25/08	Defendant's Response to Motion to Remand Removed Action by RC2 Corp. in <i>Wilson v. RC2 Corp.</i>
32	10/15/07	Affidavit of John O'Leary in Support of Plaintiffs' Motion for a Preliminary Injunction

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Elizabeth A. Fegan

Elizabeth A. Fegan